

HOUSE BILL 1958

By Newton

AN ACT to amend and restate Chapter 2 of the Private Acts of 1981, as amended by Chapter 196 of the Private Acts of 1984, Chapter 135 of the Private Acts of 1991, Chapter 44 of the Private Acts of 1997, and all other acts amendatory thereto, relative to the amusement tax in Polk County, authorizing Polk County to levy a privilege tax on certain amusements; providing for its collection and administration; providing penalties; and providing for the disposition of such tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 2 of the Private Acts of 1981, as amended by Chapter 196 of the Private Acts of 1984, Chapter 135 of the Private Acts of 1991, Chapter 44 of the Private Acts of 1997, and all other acts amendatory thereto, is amended by reenacting and restating the provisions of such acts to read as follows:

WHEREAS, the vast majority of the land area in Polk County is included in the Cherokee National Forest; and

WHEREAS, two of Tennessee's rivers which attract whitewater canoeing and rafting enthusiasts flow through Polk County and the Cherokee National Forest; and

WHEREAS, an increasing number of whitewater canoeists and rafters are accepting the challenge of the Ocoee and Hiwassee rivers; and

WHEREAS, the influx of these enthusiasts has placed an increased burden on Polk County's local inhabitants to provide law enforcement, traffic control, and first-aid and ambulance services out of proportion to the needs of the local citizenry; and

WHEREAS, at least a portion of the expenses of this greater service burden should be borne by the tourists for whose use and protection the needed services are provided; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context requires otherwise:

(1) "Admission" means admission for an amusement for a consideration and shall apply on admission fees or charges, whether or not a ticket is actually issued, even if no specific amount is charged or if complimentary;

(2) "Amusement" means any ride, excursion, or float trip by canoe, raft, or similar floating device on a whitewater river provided by a person authorized, licensed or permitted by TVA and/or the U.S. Forest Service to conduct such amusement and which is not taxed by the state of Tennessee under the "Retailer's Sales Tax Act" in accordance with Tennessee Code Annotated, Sections 67-6-212 and 67-6-330;

(3) "Consideration" means the consideration charged whether or not received for an admission for an amusement valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever;

(4) "Consumer" means any person who participates in the amusement other than guides and bona fide trainees of the operator;

(5) "Operator" means the person operating the amusement;

(6) "Person" means any individual, firm, partnership, joint venture, association, sociable club, fraternal organization, joint stock company, corporation, estate, trust,

business trust, receiver, trustee, syndicate, or any other entity, or group or combination acting as a unit.

(7) "Upper Ocoee River" means that section of the Ocoee River between Ocoee Dam Three (3) and Ocoee Dam Two (2).

SECTION 2. The legislative body of Polk County is hereby authorized to levy a privilege tax upon the privilege of a consumer participating in an amusement. Such tax shall be imposed at the rate of two dollars fifty cents (\$2.50) per person participating in the amusement, exclusive of guides and bona fide trainees of the operator providing the amusement. Such tax so imposed is a privilege tax upon the consumer enjoying the amusement, and is to be collected and distributed as provided in this act. However, no privilege tax shall be levied upon consumers participating in amusements on the Upper Ocoee River until January 1, 2004.

SECTION 3. Such tax may be added by each operator to any other consideration charged for admission for such amusement and may be collected by such operator from the consumer and remitted by such operator to the county trustee.

SECTION 4. The tax hereby levied shall be remitted to the county trustee not later than the twentieth (20th) day of each month next following the month in which the amusement service was delivered. The county trustee may promulgate reasonable rules and regulations for the enforcement and collection of such tax, shall prescribe any necessary forms, and may, by regulations, set other reporting and paying dates and periods.

In any month when no amusements are provided by an operator, such operator shall not be required to file any statement, report, or return with the county trustee, and no penalty or interest under the provisions of this act shall be imposed for failing to file such statement, report, or returns in any such month.

SECTION 5. Taxes due by an operator which are not remitted to the county trustee on or before the due dates as provided in this act are delinquent. When an operator fails to remit the tax due, or any portion thereof, required by this act on or before such due date, there shall

be imposed a specific penalty, to be added to the amount of the tax which is delinquent, in the amount of five percent (5%), if the failure is not more than thirty (30) days, with an additional five percent (5%) for each additional thirty (30) days or fraction thereof, during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate. Provided, however, where a return is delinquent at the time it is filed or becomes delinquent, the minimum penalty may be five dollars (\$5.00) regardless of the amount of tax due or whether there is any tax due. When an operator fails to remit such tax due, or any portion thereof on or before such due date, there shall be added to the amount due interest at the rate of twelve percent (12%) per annum from such date due until paid. Such interest and penalty shall become a part of the tax required to be remitted.

It is a violation of this act for an operator to willfully fail or refuse to collect or remit the tax imposed by this act. Such willful failure or refusal shall subject the operator to a fine not to exceed fifty dollars (\$50.00). The fine levied herein shall be applicable to each individual transaction involving an amusement taxable by this act when such operator willfully fails or refuses to collect or remit the tax payable to the county trustee.

SECTION 6. It shall be the duty of every operator to keep and preserve for a period of six (6) years all records necessary to determine the amount of the tax levied under the authority granted by this act, for which such operator may have been liable for remitting to the county trustee under the provisions of this act. The county trustee shall have the right to inspect such records at all reasonable times.

All statements, reports, or returns of operators and all audits of their records and files made as authorized by this act are confidential; and it shall be unlawful for anyone to make known in any manner any information contained herein except as follows:

- (1) to the operator personally;
- (2) to an attorney or other agent duly authorized by the operator;
- (3) to the county executive;

- (4) to the county fiscal agent;
- (5) to the trustee of such county or the employees in the office of such trustee; or
- (6) in accordance with proper judicial order, or as otherwise required by law.

SECTION 7. In administering and enforcing the provisions of this act, the county trustee shall have as additional powers the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, Title 67, or otherwise provided by law. Such powers shall include, without limiting the foregoing, those powers of enforcement set forth in Tennessee Code Annotated, Sections 67-1-1405 and 67-4-716.

Upon any claim of illegal assessment and collection, the operator liable for collecting and remitting the tax shall have the remedy provided in Tennessee Code Annotated, Title 67, Chapter 1, Part 9, for recovery of erroneous tax payments, it being the intent of this act that the provisions of law which apply to recovery of taxes illegally assessed and collected shall apply to the tax collected under the authority of this act; provided, the county trustee shall possess those powers and duties as provided in Tennessee Code Annotated, Section 67-1-707, with respect to the adjustment and settlement with such operators of all errors of taxes collected by him under the authority of this act and direct the refunding of the same. Notice of any tax paid under protest shall be paid to the county trustee, and suit for recovery shall be brought against him.

SECTION 8. The proceeds from the tax levied by this act shall be deposited in the general fund.

SECTION 9. The tax herein levied shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 10. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Polk County. Any amendment or modification of this tax as so approved by the legislative body of Polk County shall also require approval by a two-thirds (2/3) vote of the county legislative body of Polk County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by him to the secretary of state. Upon becoming effective hereunder the provisions of the amended and restated act shall apply to all covered amusement activities on and after the date this act is approved as herein provided. Nothing contained herein shall limit the effect of the existing act, as amended, to all covered activities prior to the date this act is so approved.

SECTION 12. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 11.